

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO.138 OF 2007

Mrs Premila S. Bansode & Anr. ...Appellants

Versus

Yusuf Ebrahim Khan ...Respondent

Shri S.M.Khaire for the Appellants.

Shri S.R.Singh for the Respondent.

**CORAM : ABHAY S.OKA, J.
DATED : MARCH 16, 2007.**

P.C.:

1. The original Defendants have taken exception to Judgment and Order dated 08th September, 2006 passed by the learned Judge of the City Civil Court, Mumbai in a Notice of Motion taken out by the Respondent-Plaintiff. The Notice of Motion has been made absolute in terms of prayer clause (a).

2. The Respondent filed a suit simplicitor for injunction restraining the Defendants i.e the Appellants from disturbing his possession over the structure described in paragraph No.1 of the plaint. According to the case of the Respondent, he has been inducted in the suit structure by the son of the real owner by the name Smt Yamunabai Sudam Sohani. The Appellant No.1

(Defendant No.1) is the daughter of the said Yamunabai.

3. The learned Advocate for the Appellants submitted that the Respondent has no title in respect of the suit structure as admittedly the said Yamunabai had not inducted him. He submitted that the Respondent is a trespasser and therefore equitable relief could not have been granted in favour of the Respondent. The learned Advocate for the Respondent supported the impugned Judgment and Order.

4. I have considered the submissions. The Appellants are not claiming to be the real owners of the property. The first Appellant claims to be the daughter of the real owner. In the impugned order, the learned Trial Judge has referred to the admission on the part of the Appellant No.1 that on 06th October, 2002 the Respondent entered possession of the suit premises. The Appellants are not disputing that on the date of institution of the suit, the Respondent was in possession of the suit premises.

5. This is not a case where injunction is granted against the true owner. A limited injunction is granted

not to dispossess the Respondent otherwise than by a due process of law.

6. The order of temporary injunction passed by the trial Court is a discretionary order and merely because a different view is possible to be taken, is no ground to interfere unless the order is shown to be perverse or illegal. No case is made out for interference. Appeal is accordingly dismissed. It is, however, made clear that the observations made in the impugned order as well as in this order are for limited purposes of considering the prayer for temporary injunction and the trial Court will decide the suit uninfluenced by observations made in both the orders.

7. Hearing of the suit is expedited.

JUDGE